

ASSEMBLY BILL

No. 1311

**Introduced by Committee on Labor and Employment (Koretz
(Chair), Chan, Chu, Klehs, Laird, and Leno)**

February 22, 2005

An act to amend Sections 98 and 98.1 of the Labor Code, relating to labor standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1311, as introduced, Committee on Labor and Employment. Labor standards: enforcement hearings.

Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation and to determine all matters arising under his or her jurisdiction. Existing law requires that, when one of these hearings is set, a copy of the complaint, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail. Existing law provides that, following an order, decision, or award in one of these hearings, the commissioner shall serve a copy of the decision on the parties personally or by first-class mail. Existing law provides a separate set of rules for valid service of a summons in a civil action.

This bill would additionally permit the service of the complaint, notice, or decision relating to one of these labor hearings to be served as provided in the rules for valid service of a summons in a civil action.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail, *or in a manner specified in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.*

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

1 (d) No pleading other than the complaint and answer of the
2 defendant or defendants shall be required. Both shall be in
3 writing and shall conform to the form and the rules of practice
4 and procedure adopted by the Labor Commissioner.

5 (e) Evidence on matters not pleaded in the answer shall be
6 allowed only on terms and conditions the Labor Commissioner
7 shall impose. In all these cases, the claimant shall be entitled to a
8 continuance for purposes of review of the new evidence.

9 (f) If the defendant fails to appear or answer within the time
10 allowed under this chapter, no default shall be taken against him
11 or her, but the Labor Commissioner shall hear the evidence
12 offered and shall issue an order, decision, or award in accordance
13 with the evidence. A defendant failing to appear or answer, or
14 subsequently contending to be aggrieved in any manner by want
15 of notice of the pendency of the proceedings, may apply to the
16 Labor Commissioner for relief in accordance with Section 473 of
17 the Code of Civil Procedure. The Labor Commissioner may
18 afford this relief. No right to relief, including the claim that the
19 findings or award of the Labor Commissioner or judgment
20 entered thereon are void upon their face, shall accrue to the
21 defendant in any court unless prior application is made to the
22 Labor Commissioner in accordance with this chapter.

23 (g) All hearings conducted pursuant to this chapter are
24 governed by the division and by the rules of practice and
25 procedure adopted by the Labor Commissioner.

26 (h) Whenever a claim is filed under this chapter against a
27 person operating or doing business under a fictitious business
28 name, as defined in Section 17900 of the Business and
29 Professions Code, which relates to the person's business, the
30 division shall inquire at the time of the hearing whether the name
31 of the person is the legal name under which the business or
32 person has been licensed, registered, incorporated, or otherwise
33 authorized to do business.

34 The division may amend an order, decision, or award to
35 conform to the legal name of the business or the person who is
36 the defendant to a wage claim, provided it can be shown that
37 proper service was made on the defendant or his or her agent,
38 unless a judgment had been entered on the order, decision, or
39 award pursuant to subdivision (d) of Section 98.2. The Labor
40 Commissioner may apply to the clerk of the superior court to

1 amend a judgment that has been issued pursuant to a final order,
2 decision, or award to conform to the legal name of the defendant,
3 provided it can be shown that proper service was made on the
4 defendant or his or her agent.

5 SEC. 2. Section 98.1 of the Labor Code is amended to read:

6 98.1. (a) Within 15 days after the hearing is concluded, the
7 Labor Commissioner shall file in the office of the division a copy
8 of the order, decision, or award. The order, decision, or award
9 shall include a summary of the hearing and the reasons for the
10 decision. Upon filing of the order, decision, or award, the Labor
11 Commissioner shall serve a copy of the decision personally ~~or~~,
12 by first-class mail, *or in a manner specified in Chapter 4*
13 *(commencing with Section 413.10) of Title 5 of Part 2 of the*
14 *Code of Civil Procedure* on the parties. The notice shall also
15 advise the parties of their right to appeal the decision or award
16 and further advise the parties that failure to do so within the
17 period prescribed by this chapter shall result in the decision or
18 award becoming final and enforceable as a judgment by the
19 superior court.

20 (b) For the purpose of this section, an award shall include any
21 sums found owing, damages proved, and any penalties awarded
22 pursuant to this code.

23 (c) All awards granted pursuant to a hearing under this chapter
24 shall accrue interest on all due and unpaid wages at the same rate
25 as prescribed by subdivision (b) of Section 3289 of the Civil
26 Code. The interest shall accrue until the wages are paid from the
27 date that the wages were due and payable as provided in Part 1
28 (commencing with Section 200) of Division 2.